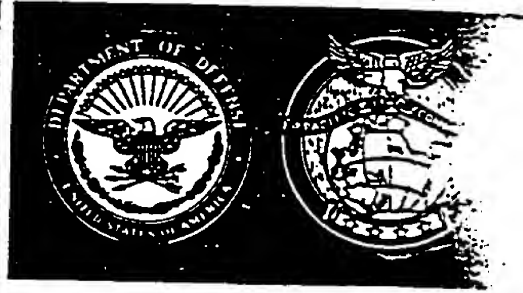


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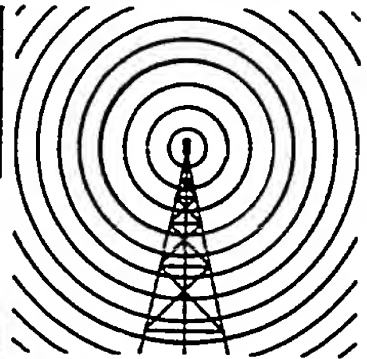
VOLUME II



CINCPAC COMMAND HISTORY

1970

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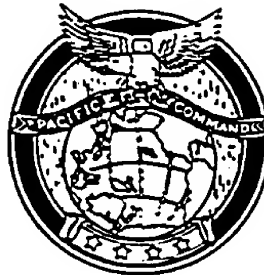
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COMMANDER IN CHIEF PACIFIC COMMAND HISTORY



VOLUME II

1970、

Prepared by the Historical Branch
Office of the Joint Secretary
Headquarters CINCPAC, FPO San Francisco 96610

CAMP H. M. SMITH, HAWAII

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Country Activities

Australia

(U) On 3 August 1970, Specialist 5 Anthony King, USA, was arrested and charged by Australian authorities with rape of an Australian national. On 8 August, the U.S. Designated Commanding Officer, Australia (USDCOA) requested a waiver of jurisdiction because the "...benefit of a cooperative investigation..." was not provided, as required by treaty. During the negotiations with the New South Wales prosecutor's office, it was discovered that the governing treaty was not fully implemented by Australian domestic law. However, King's defense counsel and the prosecutor met with the magistrate on 26 August 1970, and the case was dismissed. King was discharged from custody and sent back to his unit in Vietnam.¹

(U) In the interest of clarification for future cases of that kind, CINCPAC queried the DCO Australia regarding provisions in effect whereby personnel on R&R leave were covered by treaty in Australia. This question was being discussed at the end of 1970.²

China

(C) The Chinese SOFA provided for the exercise of criminal jurisdiction by the Republic of China (ROC) over U.S. personnel only by recalling their waiver for certain types of offenses. The intention of the ROC to recall a SOFA waiver of jurisdiction was conveyed to U.S. officials on a case-by-case basis. The recallability of certain offenses; the application of Chinese martial law to U.S. citizens; the changing of charges by Chinese courts without notice to the accused--all of these issues generated copious diplomatic and military correspondence on the part of U.S. officialdom.³

(C) At the end of 1969, two cases on Taiwan were pending which involved various aspects of the SOFA. Three USAF men--Sergeants Kennedy and Bohnenberger and Airman LeBouef--had been convicted of intimidation and sentenced to two years imprisonment by a Chinese court. Upon appeal, the appellate court had increased the charge from intimidation to robbery and increased the sentence from

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1. J73 History, Hq CINCPAC, Aug 70; USSO/AMEMB Canberra, 260635Z Aug 70.
 2. CINCPAC 280300Z Aug 70.
 3. The following narrative summarizes the negotiations and actions regarding these issues during 1970. While appropriate sources are cited, additional documentation, rich in background diplomatic and legal discourse, was provided to the writer by the CINCPAC Staff Judge Advocate. These sources are available in the permanent CINCPAC History Archives.

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two to 12 years. The sentence was handed down under Chinese military law because, according to Chinese officials, offenses under Article 328 of the Chinese Criminal Code (which included robbery) were subject to such law. An appeal of this case to the Chinese Supreme Court awaited decision. The second case involved two airmen--Bernard Baio and Richard G. Tipton--who had been charged with "forceful taking" in the stabbing and robbery of a Chinese taxi driver. Notice of recall of jurisdictional waiver had been served by ROC authorities.¹

Baio - Tipton

(X) The Staff Judge Advocate (SJA) on the staff of the Commander, U.S. Taiwan Defense Command (COMUSTDC) conferred with the Chinese Ministry of Foreign Affairs (MOFA) about the Baio - Tipton case in January 1970. The Chinese representative (Dr. Frederick Ch'ien) was informed that the U.S. could not accept a waiver recall which could subject U.S. personnel to Chinese martial law:²

...the waiver of recall cannot be considered effective in this case because it does not affirmatively state what article of the criminal code of the Republic of China will be applied... neither the summons nor the letter provide this information.... It is essential for the United States to know in advance of submission of any personnel within the purview of the Status of Forces Agreement to the jurisdiction of the courts of the Republic of China that only offenses and punishments authorized in the criminal code will be applied in their case. In addition, the United States must know that neither the martial law nor the criminal law of the Armed Forces will be applied to the case at any stage of the proceedings....

(X) On 2 February 1970, the U.S. Ambassador advised SECSTATE that the Baio - Tipton case provided, "...another example of troublesome nature of 'robbery' under SOFA provisions...." While robbery was a recallable offense under the SOFA, Chinese law placed robbery under the criminal law of the armed forces. This conflicted "head-on" with the U.S. position that such law could not be applied to personnel under the SOFA. According to the Ambassador, this was a unilateral U.S. interpretation and was not confirmed in SOFA agreements or other written form.³

1. CINCPAC Command History 1969, Vol. II, pp. 255-257.

2. COMUSTDC 090535Z Jan 70; COMUSTDC 260053Z Jan 70; J73 History, Hq CINCPAC, Jan 70.

3. AMEMB Taipei 0523/020700Z Feb 70, passed to CINCPAC by COMUSTDC 030145Z Feb 70.

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(C) Diplomatic discussion on the Baio - Tipton case continued during February. On 18 February, SECSTATE, "...deferred to Embassy' assessment that Ch'ien's assurances are promising and that satisfactory resolution of issue are enhanced by producing men at preliminary hearing...." and authorized the appearance of Baio and Tipton at such a hearing. The hearing was understood to be for the sole purpose of investigating charges of forceful taking. On 19 February, a letter explicitly stating the caveats connected with the preliminary hearing was delivered to Dr. Ch'ien.¹

(C) Prior to the start of the preliminary hearing on 20 February, a similar letter was presented to court officials. The letter stated the U.S. position that Chinese martial law was not applicable to SOFA personnel, and that the appearance of the accused at the hearing did not constitute U.S. acceptance of the waiver recall by the ROC. The hearings were concluded on 2 April, and the case was submitted to the Ministry of Justice for action.²

(C) On 15 September 1970, the base JA at the installation to which Baio and Tipton were assigned, Ching Chuan Kang (CCK) Air Base, received an indictment from the Procurator of the Taichung District Court. The charge was attempted homicide, under the (civil) Code of Criminal Procedure. This indictment eliminated the issue of martial law because insufficient evidence to prosecute for robbery was found. The finding of larceny was noted in the indictment as an offense not recallable under the SOFA. On 20 October 1970, Baio and Tipton were found guilty of attempted homicide and sentenced to three years confinement.³

(C) On 23 October 1970, the SJA of COMUSTDC was informed by the MOFA that, should Baio and Tipton appeal the sentence:⁴

.... MOFA had exhausted all diplomatic facilities at their disposal and their avenues of approach with the Ministry of Justice in attaining the three year sentence for attempted homicide. The ROC representative stated that should Baio - Tipton appeal further, MOFA would have to "wash their hands" of the matter.

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1. SECSTATE 024392/180010Z Feb 70; COMUSTDC 190722Z Feb 70; COMUSTDC 200052Z Feb 70; J73 History, Hq CINCPAC, Feb 70.
 2. AMEMB Taipei 1361/260845Z Mar 70; passed to CINCPAC by ADMINO COMUSTDC 270658Z Mar 70; COMUSTDC 220748Z May 70; J73 Histories, Hq CINCPAC, Mar-Aug 70.
 3. 6217 CSG 170318Z Sep 70, passed to CINCPAC by COMUSTDC 180140Z Sep 70; COMUSTDC 180618Z Sep 70; COMUSTDC 220254Z Oct 70; 6217 CSG 230903Z Oct 70, passed to CINCPAC by COMUSTDC 240326Z Oct 70; J73 Histories, Hq CINCPAC, Sep-Oct 70.
 4. ADMINO COMUSTDC 280326Z Oct 70; J73 History, Hq CINCPAC, Oct 70.

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(C) Apparently the accused men in this case were told of the Chinese position regarding appeal, because the father of one (Tipton) contacted the USAF headquarters requesting information. The Chief of Staff, USAF (CSAF) queried his unit at CCK Air Base for more detailed information in a direct message. Part of this message was answered by COMUSTDC direct to CSAF; the answer distilled the diplomatic and political ramifications of the case to that date (30 November 1970):¹

4. (U) Baio Tipton case originally recalled for alleged robbery. Because of mandatory application of Martial Law by GRC courts in this circumstance, and because of US position that martial law must not be applied to SOFA protected persons, US solicited good offices of Ministry of Foreign Affairs (MOFA) to find another solution. Under martial law, conviction for robbery could carry maximum penalty of death. Trial was held for charge of attempted homicide, which was not repeat not under martial law, and conviction for attempted homicide carries penalty of five years to life imprisonment, which minimum could be reduced. Baio and Tipton were found guilty of attempted homicide, sentenced to three years imprisonment.

5. (C) In light of Bohnenberger Et Al case, with similar martial law implications, MOFA acting as buffer for US Forces is in delicate position vis a vis executive Yuan, Ministry of Justice, and understandable ill feeling of local community. Victim on basis of medical evidence sustained over 20 stab wounds, head injury and apparent gouging of eyeballs. COMUSTDC rejects interpretation of MOFA washing hands (MOFA's term) as meaning Pontius Pilate discarding nuisance; rather takes view that selection of terms probably masked plea to US side to understand that MOFA's position within GRC would be weakened not only in Baio Tipton case but in any others should further intercession be called for. Taking this interpretation, MOFA statement means that MOFA has exhausted its potential for fruitful intercession, having already succeeded in ameliorating what might have been a

1. CSAF 272129Z Nov 70, passed to CINCPAC by COMUSTDC 280238Z Nov 70; COMUSTDC 300602Z Nov 70. CINCPAC "suggested" to COMUSTDC in CINCPAC 020025Z Dec 70 that future comments on communications such as the message to CSAF be forwarded to CINCPAC for additional comments and further transmission. Examination of the footnoted sources cited in this section of the History shows that much correspondence was readdressed to CINCPAC, even though COMUSTDC was directly involved in negotiations, and was subordinate to CINCPAC.

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death penalty, were the accused Chinese Nationals, to the disproportionately low penalty of three years imprisonment.

6. (b) Further intercession by MOFA could well diminish MOFA's credibility in Chinese eyes, giving MOFA the aspect of standing as advocate for alien force special benefits rather than for interests of own people. Such an outcome would certainly complicate US Forces position in any other martial law cases as well as generally diminish effectiveness of MOFA as channel for US Forces dealing with GRC.

(E) On 23 December 1970, COMUSTDC informed CINCPAC that Baio and Tipton had been summoned to appear in the Taiwan High Court on 14 January 1971 for a hearing on their appeal.¹

.Bohnenberger - Kennedy - LeBouef

(b) As previously related, this case had been appealed to the Taiwan Supreme Court after the sentence had been increased from two to 12 years under Chinese martial law. The charge had been changed from intimidation to robbery by the appellate court. On 2 February 1970, COMUSTDC informed CINCPAC that a review of the records had been presented before the Supreme Court. In the meantime (19 January 1970) LeBouef had been sentenced to four months confinement, reduction to basic airman, and a bad conduct discharge by an Air Force court-martial in an unrelated case. On 4 February, PACAF notified CINCPAC that LeBouef had escaped from custody on 2 February. He had been confined at CCK Air Base.²

(U) On 4 March 1970, the case against the three accused airmen was reversed by the Supreme Court, and remanded to the appellate court. The decision cited the failure of the court to inform the accused of the specific charges in advance (change from intimidation to robbery).³

(C) On 13 April, the 6217th Combat Support Group base JA at CCK accepted delivery of a notification of charge and summons for the accused to appear before the Taichung Branch of the Taiwan High Court. However, the notification of

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1. ADMIN COMUSTDC 230305Z Dec 70.
 2. COMUSTDC 020240Z Feb 70; CINCPACAF 040143Z Feb 70; J73 History, Hq CINCPAC, Feb 70.
 3. COMUSTDC 040150Z Mar 70, passed to CINCPAC by CINCPACAF 041841Z; COMUSTDC 170200Z Mar 70; in CINCPAC 060135Z Mar 70, COMUSTDC was again requested to include CINCPAC in related correspondence.

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charge specified robbery, while the summons for each accused specified intimidation. The new hearing was set for 7 May 1970. On 16 April, SECSTATE signified concern over the specification of robbery on the notification, which again raised possible martial law applications.¹

(b) The 7 May hearing was confined to examination of facts and did not bring forth a statement of the charges. No further action occurred until 17 July 1970, when the 6217th JA received a summons from the Taichung High Court for the subjects to appear on 22 August in a "case of intimidation." This hearing came and went with no decision. Meanwhile, Thirteenth Air Force expressed concern that LeBouef, who had been recaptured and returned to confinement at CCK, might again escape. His specified court-martial confinement ended on 14 November. Guidance was requested from PACAF regarding continued confinement in view of the unresolved Chinese charges.²

(b) PACAF submitted an extensive postulation of alternative means to assure the continued presence of LeBouef in Taiwan; in essence, the conclusion was that the U.S. could only emphasize to Chinese authorities that continued confinement by the U.S. was illegal. If custody were relinquished to the Chinese, several other issues would arise. For example, under the SOFA, the U.S. undertook to retain custody of personnel accused of Chinese law violations, and to present them for judicial proceedings when necessary. Hence, the release of LeBouef would set an undesirable precedent. Another consideration related to the suitability of confinement facilities. The U.S. and ROC had not jointly agreed on a specific facility in which personnel sentenced to penal servitude could be confined or detained. PACAF noted the danger of continued U.S. custody if LeBouef were to escape to a neutral country, however:³

.... In the absence of specific [U.S.] domestic legislation so authorizing, there is no legal authority to place an individual in pre-trial confinement for the sole purpose of guaranteeing his presence for criminal trial before a foreign court....

(b) On 30 October, CSAF noted that, ".... In view of number, status, and character of cases now in Taiwan courts involving U.S. personnel...." there was

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1. 6217 CSG 140509Z Apr 70, passed to CINCPAC by COMUSTDC 160215Z Apr 70; SECSTATE 056913/162329Z Apr 70; J73 History, Hq CINCPAC, Apr 70.
 2. AMEMB Taipei 2306/251001Z May 70, passed to CINCPAC by AMEMB Taipei 2306/130312Z Jun 70; 6217 CSG 170657Z Jul 70; passed to CINCPAC by CINCPACAF 191942Z Aug 70; COMUSTDC 010317Z Oct 70; 13AF 240352Z Oct 70, passed to CINCPAC by COMUSTDC 270310Z Oct 70 and CINCPACAF 262220Z Oct 70; J73 Histories, Hq CINCPAC, Apr-Oct 70.
 3. CINCPACAF 292045Z Oct 70.

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a pressing need for joint agreement on confinement facilities under the SOFA. In any event, CSAF intended to solicit a joint State-Defense position on the case.

(C) The joint State-Defense position was stated on 4 November to the U.S. Ambassador. Chinese authorities were to be briefed on LeBouef's history of escapes and announced intention to seek refuge in Sweden. If custody were retained by the U.S. his assignment on Taiwan would continue, and he would be restricted to his base of assignment. However, he would not be confined, and the escape risks involved were to be clearly understood and accepted by the ROC. If the Chinese were not willing to accept these limitations, they were to be advised that the U.S. would favorably consider a request for transfer of custody to the ROC. The need for an agreement on confinement facilities was stressed, and some confusion as to the actual status of the case was evinced. "We are unable to understand the procedures before the Taiwan High Court...."2

(C) On 10 November, COMUSTDC once again attempted to clarify the situation. At that time, the case was pending the result of a lower court hearing on a charge of intimidation. It was "analogous" to a new proceeding, and additional evidence as to the extent of intoxication of the defendants was introduced. Subsequent to the hearing, because of a change in Ministry of Justice personnel, "...an element of unsteadiness was weaved into the case...." On 9 November, Chinese officials had been assured that the charge of intimidation was satisfactory, informed of U.S. limitations regarding LeBouef's confinement, and U.S. retention of custody with base restriction for LeBouef. The ROC officials stated their intention to formally request Joint SOFA Committee consideration of the confinement facilities problem. Based upon the foregoing, COMUSTDC, "...anticipated the case will once again start to move...."3

(C) One week later, on 17 November, CINCPAC requested further clarification from COMUSTDC, citing 17 specific messages for reference and noting apparent confusion and inconsistencies in various status reports. COMUSTDC responded with a detailed description of Chinese criminal and appellate procedure, again assured CINCPAC that an understanding had been reached with ROC authorities, and noted, "...the good offices that exist between COMUSTDC and GRC officials...."4

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1. CSAF 302058Z Oct 70; CSAF 022324Z Nov 70; J73 Histories, Hq CINCPAC, Oct-Nov 70.
 2. SECSTATE 181346/042015Z Nov 70; J73 History, Hq CINCPAC, Nov 70.
 3. COMUSTDC 100843Z Nov 70.
 4. CINCPAC 170336Z Nov 70; COMUSTDC 180343Z Nov 70; J73 History, Hq CINCPAC, Nov 70.

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inference that the ROC would be granted veto power on SOFA contractors selected by the U.S.¹

(C) In a summarizing memorandum on 4 June 1970, the CINCPAC Staff Judge Advocate noted that the Chinese reaction in this case could have been anticipated. Considering the long tenure of Foremost in Taiwan, and the awarding of a new contract without notice to the ROC, a challenge on procedural grounds was typical. Moreover, the scope of the problem was so limited that a confrontation over the treaty interpretation was not appropriate. The CINCPAC JA recommended that CINCPAC continue to support the efforts of State and the Embassy to resolve the problem and that CINCPAC should neither declare a nonconcurrence with COMUS- TDC nor respond to COMUSTDC's objections but should allow negotiations already underway to take their course.²

(C) On 12 June 1970, the U.S. Ambassador in Taipei notified SECSTATE and SECDEF that the MOFA had granted contractor status to Old Dominion.³

Hong Kong

Libel Suit Against R&R Officer

(U) On 3 May 1970, LCDR Robert L. Stanford, U.S. Navy, was sued for libel by Davidson and Partners and Pacific Mail Order System, Limited. Stanford was serving as Officer-in-Charge, U.S. Rest and Rehabilitation (R&R) Office, Hong Kong. The suit was based upon a letter written by Stanford on 11 December 1969 to the Circulation Manager of the Pacific Star and Stripes. The letter alleged that, as the distributors of Stars and Stripes in Hong Kong, Davidson and Partners had illegally inserted advertising in the paper. The firm being advertised, Pacific Mail Order System, Limited, according to Stanford's letter, had a, "... less than desirable reputation" with U.S. personnel. That statement was based upon an article published in the newsletter of the U.S. Army Support Command, Saigon warning military personnel about that particular company.⁴

(U) Upon receipt of the writ of summons, Stanford turned it over to the American Consul, who sent it to the Protocol Office of the Hong Kong Government. A cover letter pointed out that Stanford was acting in the performance of his official duties, was a member of the Consul General's staff, and had been so accredited by the Hong Kong Government. Article II of the U.S.-U.K. consular

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1. SECSTATE 083301/301632Z May 70; COMUSTDC 010640Z Jun 70.
 2. Memorandum 020-70, J73, Hq CINCPAC (CAPT Douglass to RADM Janney), 4 June 70, Subj: Old Dominion Dairies/Foremost Dairies, Ltd.
 3. AMEMB Taipei 2592/121119Z Jun 70.
 4. J73 History, Hq CINCPAC, May-Jun 70; AMCONSUL Hong Kong 1761/140815Z May 70, passed to CINCPAC by COMUSNAVPHIL 150833Z May 70.

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convention stated that a consular officer shall not be liable in court proceedings of his receiving state for acts performed in his official capacity.¹

(U) In reply to query from SECSTATE the American Consul provided the legal status of the Pacific Stars and Stripes, citing CINCPACINST 5720.15, which stated that the newspaper was operated as a revenue - producing, nonappropriated fund activity of CINCPAC. Operational command was exercised by CINCPAC through CINUSARPAC. The CINCPAC directive also specified that advertisements by, or in behalf of, private firms or corporations were not authorized.²

(U) As advised by the Hong Kong Government, the Justice Department authorized the retainment of counsel for Stanford, and COMUSNAVPHIL and the Consul in Hong Kong both furnished statements attesting to the official duty nature of Stanford's action. The case was settled out of court on 6 June 1970 (when Stanford agreed not to press for solicitor's fees), and the following order was subsequently issued by the Hong Kong court:³

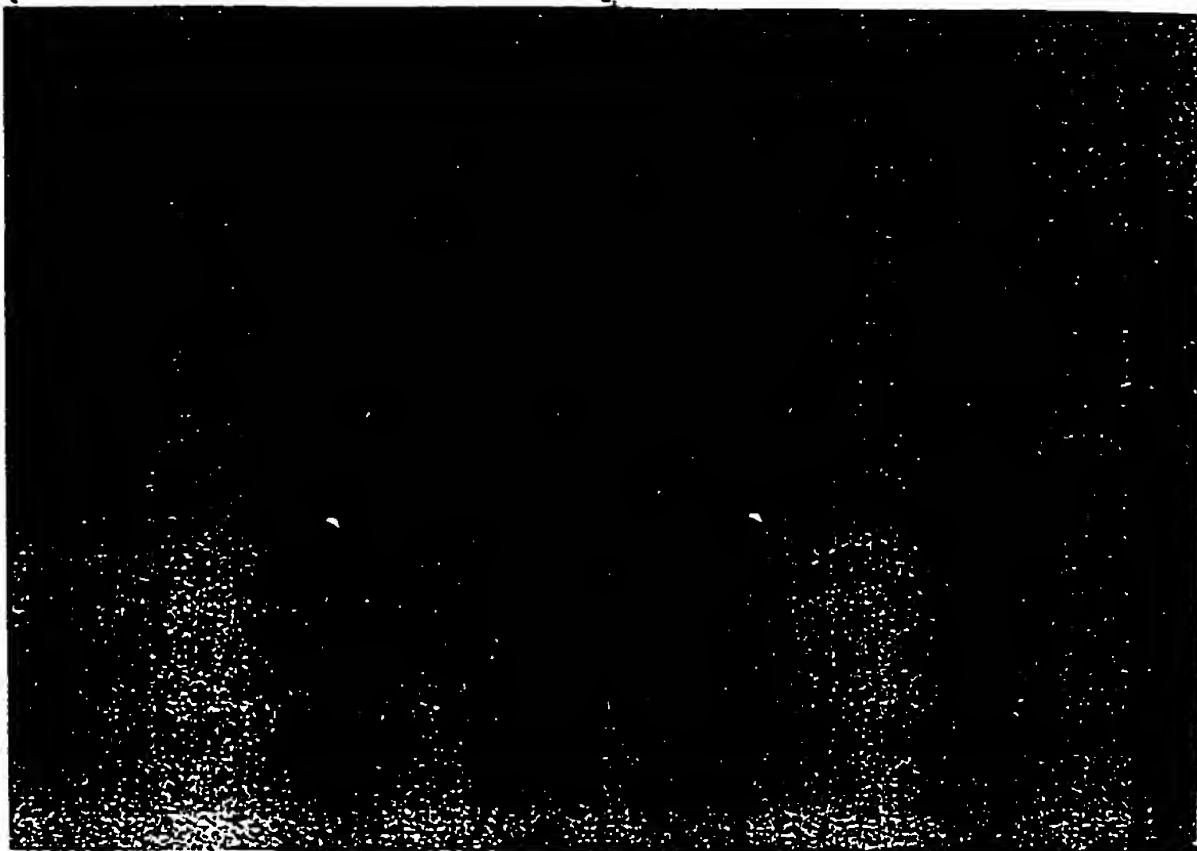
.... The first and second plaintiffs to withdraw this action on condition that the said plaintiffs be precluded from bringing any fresh proceedings against the defendant on the same grounds as this action. No order as to costs.

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1. COMUSNAVPHIL 5822/140513Z May 70.
 2. AMCONSUL Hong Kong 1793/150900, 2 May 70.
 3. SECSTATE 074459/152118Z May 70; COMUSNAVPHIL 5820/160515Z May 70; AMCONSUL Hong Kong 1890/220910Z May 70; AMCONSUL Hong Kong 2138/110700Z Jun 70.
 4. CINCPAC 102048Z Jan 70; J3851 History, Hq CINCPAC, Jan 70.

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Japan

Security Consultative Committee Meetings

(S) The 11th meeting of the Japan-U.S. Security Consultative Committee (SCC) was held in Tokyo on 19 May 1970. The U.S. was represented by Ambassador Armin H. Meyer and Admiral John S. McCain, Jr., CINCPAC. Japan representatives were Foreign Minister Aichi and Director General of the Japan Defense Agency (JDA) Nakasone. Aichi reviewed the political situation in Japan, placing emphasis on the Japanese intention to support the continuance of the Japan-U.S. Treaty of

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1. CINCPAC Command History 1969, Vol. I, pp. 198, 199; USDAO AMCONSUL Hong Kong 132/180354Z Jan 69.
 2. CINCPAC Command History 1969, Vol. I, p. 135; J3B51 History, Hq CINCPAC, Jan 70.
 3. USDAO AMCONSUL Hong Kong 939/210721Z May 69; ADMIN CINCPAC 212302Z May 69; CINCPAC 260121Z Jul 69; J3B51 History, Hq CINCPAC, Jan 70.

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